

AGENDA
Interested Persons Meeting
428 J Street, Suite 800
Sacramento, CA 95814
October 20, 2010 - 10:00--11:00 a.m.

Staff of the Fair Political Practices Commission will hold an interested persons' meeting on **Wednesday October 20 at 10 a.m.** to solicit public comment regarding:

- *The Commission's current policy to confirm the receipt of sworn complaints when asked by the public or press.*
 - *Proposed Amendment to Regulation 18313.5 to provide for the Commission's Posting of Notices of Investigation.*
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Background

Generally, all transparency laws and policies are based on the same purposes. For example, Section 54950 of the Government Code provides:

“The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The California Public Records Act (CPRA) contains a similar express declaration of the CPRA's purpose: “the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.” (Section 6250.)

The Supreme Court described the Public Records Act in *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363 as follows:

“The Public Records Act, section 6250 et seq., was enacted in 1968 and provides that ‘every person has a right to inspect any public record, except as hereafter provided.’ (§ 6253, subd. (a).) We have explained that the act was adopted ‘for the explicit purpose of “increasing freedom of information” by giving the public “access to information in possession of public agencies.” ’ (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651 [230 Cal.Rptr. 362, 725 P.2d 470].) As the Legislature declared in enacting the measure, ‘the Legislature . . . finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.’ ” (Section 6250.)

Moreover, in *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, the Supreme Court stated:

“Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.”

Posting of Records under the Political Reform Act¹

One of the stated purposes for the enactment of the Political Reform Act in 1974 was as follows:

“The people enact this title to accomplish the following purposes:

“(f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.” (Section 81002.)

As described above, the purposes of the Act, like the purposes of the CPRA, emphasize that the public has a role in enforcing the laws that administrative agencies interpret and enforce. Moreover, in order to be able to fulfill this role, the public has need of information. In light of these policies, in February 2007, the Commission implemented a policy through which the staff would confirm the receipt of sworn complaints and whether an investigation was opened in response to the complaint. In addition, the Commission also made strides to ensure that both complainants and persons subject to an investigation received timely notice of the Enforcement Division’s determination to investigate an allegation.

With the introduction of the new policy came greater public interest in the Commission’s enforcement activity. Public Record Act requests for newly filed complaints increased. Experience with the new policy raised issues with respect to timely public access to enforcement materials. The Commission sought to make more information available to the public electronically.

In May 2010, Regulation 18313.5 was enacted to codify the Commission’s posting practices. It provides in pertinent part:

“(a) Not later than 10 days after issuance or receipt by the Commission, the Commission shall post the following information on its website:

“(1) Commission opinions issued pursuant to subdivision (a) of Section 83114.

“(2) Staff advice letters issued pursuant to subdivision (b) of Section 83114.

“(3) Warning, advisory, and closure letters issued by the Enforcement Division.

“(4) Behested payments reports filed with the Commission pursuant to subdivision (b)(2)(B)(iii) and (b)(3) of Section 82015.”

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

At the time Regulation 18313.5 was proposed, staff described the purpose of the regulation as follows:

“The Commission’s goal was to make it easier for individuals visiting the website to gain access to important public information regarding Commission activities concerning the enforcement and interpretation of the Political Reform Act as well as other informational reports the Commission deems related to its purposes.”

In September, 2010, based on the fact that the Commission’s Public Records Act Policy allowed the release of enforcement notice letters and the sworn complaints in response to a Public Record Act request, the Commission staff began posting these materials. With respect to investigations based on sworn complaints, the Enforcement Division posts the investigation confirmation letters and initial complaint form. In regard to investigations initiated by the Enforcement Division, the Enforcement Division posts the notice letters and letters on which the investigation is based, if any.² With the posting, the website cautions:

“Within 14 days of receiving a complaint signed under penalty of perjury, the Fair Political Practices Commission must inform the complainant of whether or not we will investigate their allegations. The FPPC has begun posting enforcement cases that staff determined, as of September 9, 2010, warrant further investigation. At this time the Commission has not made any determination about the validity of the allegations made, or about the culpability, if any, of the persons identified below.

“Commission staff does not provide status updates on investigations. Investigations are resolved with a determination of no wrongdoing, through advisory or warning letters, issuance of administrative fines, and in some instances civil lawsuits. Once a case is closed, a link to the document discussing the method of closure will be provided.”

The Commission will consider an amendment to Regulation 18313.5 in December to add this information to the list of material to be posted on the website.

You may participate in this interested persons meeting in person or by teleconference by calling (877) 771-7176; access code 348709. For questions about participating by phone, you may contact Virginia Latteri-Lopez at (916) 322-5660. The Commission also invites written comments addressing these topics. You may also contact Assistant General Counsel John Wallace at (916) 322-5660 with comments on these issues or questions about the meeting.

² The Commission will redact addresses, telephone numbers, e-mail addresses, signatures, and personal financial information before posting to the website.